IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CUSTOM APPEAL NO. 1 OF 2005
DATE OF DECISION: 30.8.2007

Commissioner of Customs, Amritsar

…Appellant

Versus

Harinder Singh

…Respondent

**CORAM: HON'BLE MR. JUSTICE M.M. KUMAR**

**HON'BLE MR. JUSTICE AJAY KUMAR MITTAL**

Present: Mr. Sanjeev Kaushik, Advocate,
for the appellant.

Mr. Sudeep Singh, Advocate,
for the respondent.

**JUDGMENT**

**M.M. KUMAR, J.**

The instant appeal has been filed by the revenue under Section 130 of the Customs Act, 1962, challenging final order No. 1191/04-NB(A), dated 3.11.2004, passed by the Customs, Excise and Service Tax Appellate Tribunal, New Delhi (for brevity, 'the Tribunal'), claiming that the following question of law would emerge for determination of this Court:-

"Whether the Tribunal is justified in allowing deduction of Redemption Fine only and not the amount of duty, penalty and other charges in view of Section 111 and 125 of the Customs Act, 1962?"

Brief facts may first be noticed. The Government of India, Ministry of Finance, Department of Revenue issued a notification bearing No. 258/90-Customs, dated 23.10.1990, whereby exemption of duty of custom was granted for a motor car when imported into India by an Indian repatriate from Iraq or Kuwait through land customs station at Attari, Amritsar (P-2). The respondent-assessee, who was repatriated from Iraq and holder of Indian Passport No. E-134764, imported a Toyota Crown car Model No. 1988 at assessed value of Rs. 15 lakhs, vide Bill of Entry dated 9.2.1991. The respondent-assessee claimed exemption from duty under Notification No. 258/90-Cus., dated 23.10.1990 (P-2). The aforementioned car was seized by the appellant-revenue alleging that the respondent had mis-declared the particulars of the car. A show cause notice was issued proposing confiscation of the car and penalty. Subsequently, the Collector of Customs adjudicated the matter and vide his order dated 10.6.1993, denied the benefit of notification dated 23.10.1990. He ordered confiscation of the car and a penalty of Rs. 3,00,000/- was also imposed.

On an appeal filed by the assessee-respondent, the Tribunal vide final order dated 28.5.1999 (P-6) set aside order of the Adjudicating Authority confiscating the vehicle absolutely. The Tribunal disposed of the appeal filed by the assessee-respondent

being appeal No. C/930/93-B2. The Tribunal found that the conditions as laid down in the notification dated 23.10.1990 (P-2) were fulfilled by the assessee-respondent. Accordingly, the importer was required to show to the satisfaction of the custom authorities that the motor car was registered in the name of the importer. The allegation of the department has been found to be misplaced because the Registration Certificate produced by the importer and available on record shows that the vehicle was registered in the name of the importer, namely, Shri Harinder Singh. The Tribunal rejected the certificate issued by the Indian Embassy in Baghdad on 8.1.1991, stating that the car was registered in someone else's name. The Tribunal further held that due consideration is required to be given to the scheme of notification dated 23.10.1990 (P-2), which was issued on humanitarian grounds. The Tribunal also ignored the opinion expressed by the Expert who opined that the model of the vehicle was 1990 and not 1988 as per the claim made by the assessee-respondent. The basis for ignoring the opinion of the Expert was that the Expert was never produced before the authorities and his testimony was not authenticated by cross-examination by the assessee-respondent. Accordingly, it was found that the assessee-respondent was entitled to the benefit of notification dated 23.10.1990 and concluded that the restriction imposed by paragraph 135 of Import and Export Policy for the year 1990-93 have to give way to the beneficial nature of notification dated 23.10.1990. Consequently, the order of absolute confiscation of the vehicle was set aside and the assessee-respondent

was given an option to redeem the impugned vehicle. The penalty of Rs. 3,00,000/- imposed on the assessee-respondent was also set aside.

In pursuance to the direction issued by the Tribunal, the Adjudicating Authority, namely, the Commissioner of Customs, Amritsar, after issuing show cause notice granted option to the assessee-respondent to redeem the sale proceeds as the car had already been sold in auction on 10.10.1997 for a sum of Rs. 2,00,000/-. In its order dated 31.3.2004 (P-8), the Adjudicating Authority observed that the assessee-respondent is given an option of redeeming the sale proceed of Toyota Crown car Model 1988 imported vide Bill of Entry dated 9.2.1991 on payment of redemption fine of Rs. 2,20,000/-.

The order of the Adjudicating Authority was challenged by the assessee-respondent before the Tribunal who accepted the appeal filed by the assessee-respondent and direction was issued to the custom authorities to return within a period of 8 weeks from the date of receipt of the order the value of the car which was fixed in the seizure memo i.e. Rs. 15 lacs by deducting the redemption fine of Rs. 2,20,000/-. The view of the Tribunal is discernible from para 2 of the order, which reads as under:-

> "2. We have heard both sides. The appellant's contention is that he is entitled to the value of the car as shown in the seizure memo which is Rs. 15 lakhs after deduction of the redemption fine amount of Rs. 2.20 lakhs, in the light of Tribunal's order in Anil Kumar Jaiswal Vs. CC Patna – 2003(58) RLT 1013 (T) and the

> decision of the Delhi High Court in Shilp Impex Vs. Union of India 2001 (128) ELT 54 (Del.) confirmed by the Supreme Court in 2002 (140) ELT 3 (SC). The submission of the appellant has great force in the light of case cited supra. We, therefore, grant the prayer of the appellant by directing the Customs authorities to return within a period of eight weeks from the date of receipt of this order, the value of the car as fixed in the seizure memo i.e. Rs. 15 lakhs minus the redemption fine of Rs. 2.20 lakhs."

We have heard learned counsel for the parties at a considerable length and find that the view taken by the Tribunal is not open to any doubt, especially when it is based on the judgment of Delhi High Court in Shilp Impex's case (supra) as confirmed by Hon'ble the Supreme Court. It is admitted position that the view of the Tribunal taken in its order dated 28.5.1999 (P-6) holding the assessee-respondent entitled to the benefit of notification dated 23.10.1990 has attained finality as no further appeal was carried to this Court. Therefore, it has to be held that the assessee-respondent is entitled to the return of the vehicle and not merely to its sale proceed, as has been held in Shilp Impex's case (supra). We are further of the view that the Tribunal has taken the correct view by holding that the assessee-respondent must be paid the price of the vehicle which was fixed in the seizure memo, namely, Rs. 15 lacs by setting off redemption fine of Rs. 2,20,000/- . We find no illegality in the order passed by the Tribunal.

The argument of the learned counsel for the appellant-revenue, placing reliance on some of the orders passed by the Tribunal, has not impressed us because the view taken by the Tribunal based on the decision of Delhi High Court has been confirmed by Hon'ble the Supreme Court which is squarely applicable to the facts of the present case. We find no merit in the contention raised by the learned counsel for the appellant-revenue.

For the reasons aforementioned, this appeal is dismissed and the order of the Tribunal, dated 3.11.2004 (P-9) is upheld. We do not find that any question of law much less a substantive question of law would arise for determination of this Court. As the operation of order dated 3.11.2004 was stayed by this Court on 27.1.2005, we direct the appellant-revenue to make payment to the assessee-respondent within a period of two months from the date of receipt of copy of this order along with interest @ 8% from the date the amount was payable till the date of its payment.

**(M.M. KUMAR)**
**JUDGE**

**(AJAY KUMAR MITTAL)**
**JUDGE**

**August 30, 2007**
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